

MEETING OF THE BOARD OF BANK ADVISORS

November 25, 2013

9:00 am

Department of Financial Institutions
324 South State Street, Suite 201
Salt Lake City Utah

Minutes

BOARD MEMBERS PRESENT:

Eric Schmutz, Dave Brown, Craig White, and Roger Shumway. Matt Packard is excused.

DEPARTMENT OF FINANCIAL INSTITUTIONS STAFF PRESENT:

Commissioner Ed Leary, Tom Bay, Paul Allred, Eva Rees, Mark Peterson, and Sonja Long.

OTHERS PRESENT:

Lew Goodwin, Green Dot Bank; Don Norton, Capital Community Bank; Doug Bringhurst, The Village Bank; John Sorensen, Home Savings Bank; Leonel Castillo, American Bank of Commerce; Andrew Howard, American Bank of Commerce; Kevin Stocking, Heber Valley Bank; Jon Allen, Bank of American Fork; and Brian Gurney, Central Bank.

1. Call Meeting to Order – Chairman Eric Schmutz

2. Minutes –

Roger Shumway made the motion to approve the minutes, Dave Brown seconded the motion. It was unanimous.

Commissioner Leary asked for just a minute of time. He presented Doug Bringhurst with a plaque honoring his services on the Board of Bank Advisors from September 10, 2001 to December 28, 2011. Commissioner Leary thanked him on behalf of the department for his service.

3. Legislative Preview – Paul Allred

Paul went through what the department is working on for the 2014 Legislative Session. Most of you should know what we are planning because we sent out on October 30, an email with a proposal of the changes we are proposing to Title 7, 70C and 70D.

Hopefully you have seen those, he had copies of the changes. Paul went through the changes.

During the 2013 session the department was contacted about some concerns that were being raised about what appeared in Chapter 3 in the code. The question was, could we go to the sponsor of SB150, Senator Adams, and ask him to include those changes. That is really difficult to do once the bill is numbered and out. The commitment that the Commissioner made was to have all of the supervisors review their chapters during the time between sessions and come back with recommendations to the Commissioner for things that needed to be changed. What you see in front of you is what was put together by the Supervisors. We went through them and then made the recommendations to the Commissioner. We then forwarded those to the associations because industry input is important to the department, so that we know what you are thinking. He went through a couple of examples from the industry input. Then we went through the procedure in getting a sponsor and putting the bill together. Paul thinks that we got good responses in sending it out and hopefully the associations will be able to support it.

Paul brought up the investigations of the Attorney General, Commissioner Leary asked him to talk about this. There were originally four or five and there are still a couple on going. Unfortunately we were contacted in one of the investigations. Mr. Swallow worked for the payday loan industry prior to going into the Attorney General's office and that was one of the focuses of the House investigation. When John went to the Attorney General's office our discussions with him on the payday industry ceased. We are represented by an assigned Assistant Attorney General that deals with us. We didn't have direct contact with John when he took office. That was something that the investigators wanted to discuss with us.

Another angle that they wanted to discuss with us has been part of a number of articles dealing with gambling and poker. SunFirst Bank was involved in third party payment processing that involved two online poker sites. And we had discussions with the Attorney General's office about the legality of that. The articles said that Jeremy Johnson wrote emails to John Swallow in July 2010 and so the conversation was centered around what was our involvement during that time period. We are always very cautious discussing what's going on as a regulator with the banks. And that doesn't change when we close a bank. We still treat the information we have about the institution as confidential and we don't disclose that. Tom was contacted by the Tribune, the reporter wanted to get the department's view on that. Our response was, we have no comment. We were very concerned about answering questions about what went on with the closed institution. We are still waiting to see what the house does with the investigation. Commissioner Leary said that by statute the Attorney General's office represents the department; in this case it was interesting because the Attorney General was the subject of the investigation. So we have an inherent conflict with our lawyers in this matter. We have a couple of options if the House investigation continues how to respond to potential subpoenas, where do we go for representation. We are at that threshold right now. The interesting thing our statute is very clear, it says that we can produce documents in

response to a court ordered, signed by a judge, subpoena. This is a legislative subpoena, signed by a committee chairman. We are willing to cooperate, within reason.

Paul added that when we get subpoenas for closed institutions, we go to the Attorney General's office for counsel on how to proceed. As Commissioner Leary indicated, that was taken away from us in this situation because of the conflict it created.

4. FDIC Advisory Board Update – Leonel Castillo

Leonel explained that being on this board provides access to the Chairman, the Vice Chairman and other top level executives. The FDIC Community Bank Advisory Committee is a 15 member board; he gave an overview of the role of this board. There have been 3 meetings this year. He gave out a handout from their recent meeting. He went over the information on the handout. Eric Schmutz asked if we could put Leonel on the agenda for our May meeting to report on his April meeting. Leonel said that if anyone has something for the agenda, to let him know.

5. Community Banking Conference Recap – Tom Bay

In July we did a survey on some common issues and questions to be covered for community banking and the future of community banking. He went over the results of that national survey. We held it as a town hall meeting; the overall results came from over 1,700 community bankers. The conference took place in October; it was sponsored by the FED and CSBS. This survey was part of that. Tom pulled out a part of the compiled information and made copies for everyone.

There were six or seven questions/issues that they wanted the community bankers to give feedback on. He went over those items.

6. Performance Trends – Tom Bay

Tom gave out his report. He went through the asset quality page.

7. Commissioner's Comments – Commissioner Leary

Commissioner Leary gave a handout on Qualified Mortgage (QM) from the CFPB. A lot of this will go into effect in early January.

He mentioned that the Governor has divided his cabinet into three sub-cabinet groups and has asked that they meet monthly. The full cabinet meetings have been scaled back to quarterly. He has asked that they have more in-depth discussions on the issues that affect state government. He created the Business and Regulatory group with nine agencies in it. Commissioner Leary was asked to be the facilitator for that group. Paul takes notes and summarizes to pass back to the Governor's office.

There is a State Coordinating Committee where the CFPB works with the state banking regulators dealing with the non-depository entities and have a single point of contact. It bridges CSBS, NASCUS, payday lending, money transmitters, debt collectors, mortgage servicers, mortgage lenders. The CFPB has asked that we put together a group to coordinate interstate, large multi-state exams of any entity in that group. We were able to strike an agreement and put together a committee and have had one meeting and have started a schedule for 2014.

Dave Brown said that the last time we met the Commissioner outlined the SUCCESS framework that the state was implementing, is there any update on that? Commissioner Leary said that it is still proceeding. The Governor's Office of Management and Budget has set out to create for each agency a matrix that measures efficiency. For ours is not as much as efficiencies as effectiveness. We created broadly a "watched institution definition" which will include all institutions rated 3, 4, or 5. And those who are rated a 2 but have a 3 in management. We are very sensitive that we don't want individual institutions to be noted, but some measure of how effective we are at reducing the level of "watched institutions". Quarterly we are computing that, the management and budget office is putting together a methodology where we will feed that monthly into a web-based portal that will be dealt with at the state level, eventually some portion of that portal will be made available to the public. The final cut from DFI would simply be a base line of 38 ½% of our institutions would be classified as watched institutions. That simply becomes the base line and we are looking for 25% decrease of that base line. It is taking longer to put the technology together behind all of that.

As part of our overall evaluation we are looking at and asking for an increase in the number of examiners. With the number of compliance exams and the various specialty exams that we are involved in are increasing it has reached the point that we need some additional support. Commissioner Leary doesn't know if the Governor's Office will approve it or if the Legislature will fund it. He explained that the department feels that there needs to be a fee reduction for the largest of our institutions. He would like to deficit spend for a few years to reduce the restricted account. At this point, the debate between the associations and the department is if it will be an industry bill or a department bill. Eric Schmutz said that he wants the department to know that they are appreciated and that the examiners do a good job.

8. Other business –

Leonel Castillo asked about a lawsuit that FDIC filed against some of the principals of Centennial Bank. Is there any insight that could be given? He said that there were 16 specific loans that the FDIC was alleging gross negligence. Paul Allred answered. He said that we don't get updates from FDIC on the closed institutions. We were aware that the FDIC was getting ready to file that action, not because the FDIC informed us, but because some of the former directors were in contact with us. Paul said that he went out to the website to see what else was out there. He found that they had settled a couple of cases that we weren't even aware of. The settlements are public and on their website. What you pick up from that is they are looking at the directors and their fiduciary duties

and whether that has been breached. And whether there is a cause of action that FDIC can pursue to collect money back to pay the fund. Paul is not aware of the action that Leonel is talking about.

9. Date of next meeting – February 24, 2014 – 11:00 am